IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 58904-M of 2006

DATE OF DECISION : 25.09.2006

Vijay Kumar

.... PETITIONER

Versus

Harbhajan Singh

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. O.P. Nagpal, Advocate,
for the petitioner.

* * *

Petitioner Vijay Kumar, who is an accused in a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act (hereinafter referred to as `the Act'), has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of the order dated 7.2.2006, passed by Judicial Magistrate Ist Class, Ludhiana, whereby his application to summon the defence witnesses was dismissed, as well as the order dated 9.9.2006, passed by Additional Sessions Judge, Ludhiana, whereby his revision against the said order has been dismissed.

2. I have heard counsel for the petitioner and gone through the impugned orders.

3. In this case, the aforesaid complaint under Section 138 of the Act was filed by the respondent in the year 2002. On 21.10.2004, the complainant closed his evidence. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded and the case was fixed for defence evidence on 31.1.2005. But in spite of several opportunities granted during the period of one year, he examined only two witnesses. After giving last opportunity to the petitioner, his defence evidence was closed by order of the court on 6.2.2006 and the case was adjourned for arguments. Thereafter, during the course of arguments, the petitioner filed the instant application,

which was dismissed by the trial court. The revision against the aforesaid order has also been dismissed by the revisional court vide impugned order dated 9.9.2006, while observing as under :-

> "6. It is clearly mentioned by the trial court that the revisionist/accused failed to conclude his evidence even after getting time for one year. The application for calling the defence witnesses was filed by the revisionist on the ground that prior to the commission of alleged offence the applicant was no more concerned with the accused company nor he has made any instructions to stop payment of the cheques and for that purpose he wants to summon the official of the Allahabad Bank, Cheema Chowk, Ludhiana, concerned official/record keeper, Registrar of the Company, Defence Colony, Garha Road, Jalandhar, concerned accounts officer/official of the accused company no.1 for production of minutes book, copy of registration letter accepted by the Board of Directors of the Company and Dr. Inderjit Singh, Hand Writing Expert.
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> 7. The applicant has been shown as Director of the accused company and cheques bear his signatures and all the facts mentioned in the application were very well in the knowledge of the revisionist at the time when he was leading his own evidence but no efforts are made by him to produce the evidence and now when the case was ripe for arguments, he moved this application before the trial court just to prolong up and to fill up the lacuna of this case.
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> 8. However, it is held by our own Hon'ble Punjab & Haryana High Court in case `Sanjay & anr. vs. State of Haryana' 2005 (2) Criminal Court Cases 376' Criminal Procedure Code, 1973, Sections 311, 397 (2) and 401- Recall of a witness- Refusal- order is an inter locutory order- Revision against- Not maintainable.
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> 9. In view of this, the present revision is also for recall of

defence witnesses which is also inter locutory order is not maintainable which is hereby dismissed...."

4. Keeping in view the aforesaid facts, it appears that the filing of the application by the petitioner before the trial court is only a delaying tactics. The petitioner has already availed sufficient opportunities to lead his defence evidence. I do not find any ground to interfere in the impugned orders.

5. Dismissed.

September 25, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**